Collector of Central Excise Vs. Mala Metals

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-14-1988

Reported in : (1991)LC416Tri(Delhi)

Appellant : Collector of Central Excise

Respondent : Mala Metals

Judgement :
1. The question to be decided in these appeals is whether deemed Modvat credit is admissible to the respondents in respect of duty on inputs which figured in the Notification Nos. 149/86-CE., 152/86-C.E., 172/84-C.E., 178/84-C.E. and 208/83-C.E. These notifications exempted the whole of the Central Excise duty on the goods specified therein subject to fulfilment of the conditions mentioned in the notifications.

The Assistant Collector of Central Excise held that as the inputs were exempted from the whole of Central Excise duty by the aforesaid notifications, they were clearly recognisable as non-duty paid or charged to nil rate of duty and hence the Modvat credit was not admissible in terms of the second proviso to the direction contained in the Ministry's letter F. No. B-22/5/86-TRU dated 7-4-1986. The order of the Assistant Collector was set aside by the Collector of Customs and Central Excise (Appeals), New Delhi by the impugned order. Hence these appeals before this Tribunal.

2. I have heard Shri Kumar, SDR for the appellant and Shri Chopra for the respondents. Shri Kumar has argued that the inputs were exempted by notifications (as referred to above) and the respondents could not produce proof of payment of duty on the said inputs and as such Modvat credit was not available to them. He has, therefore, prayed that the order of the Collector (Appeals) should be set aside, the order of the Assistant Collector should be restored and the appeals filed by the Revenue should be allowed. Shri Chopra for the respondents has argued that the case of the respondents is squarely covered by the decision of this Tribunal in the case of Collector of Central Excise, Chandigarh v.M/s. Kapsons Electro Stampings, reported in 1988 (37) E.L.T. 323 (T) 1988 (18) in which it was held that the Modvat credit cannot be denied in case of market stocks of goods which were not unconditionally exempted from Central Excise duty. Shri Chopra has, therefore, prayed that following the earlier decision of the Tribunal, the present appeals of the Revenue should be dismissed as the cases are identical.

3. I have considered the records of the case and the arguments of both sides. In the decision relied on by Shri Chopra the Tribunal held as follows:- "M.S. Sheets are exempted from the whole of the duty of excise in terms of the aforesaid Notification No. 208/83-C.E. only if the inputs (for sheets) falling under the same Chapter 72 have already paid duty or no credit of duty has already been taken on the inputs either under Rule 56A or under Rule 57A as the case may be. The department has failed to produce any evidence to the effect that the aforesaid conditions are satisfied in the case of M.S. Sheets purchased by the respondents from the open market. It cannot, therefore, be held that the M.S. Sheets purchased by the respondents from the dealers in the open market are fully exempted from duty.

The direction dated 7-4-1986 of the Government, as set out hereinbefore clearly entitles the manufacturer purchasing the steel sheets of thickness not exceeding 5 mm to take the credit at the rate of Rs. 500/- per tonne without production of documents evidencing payment of duty. If the department contends that clause (ii) namely, "if such inputs are clearly recognisable as being non-duty paid or charged to nil rate of duty" is applicable to these inputs (M.S. Sheets) it is for department to produce sufficient evidence in support of their contention. The department has produced no evidence whatsoever that the M.S. Sheets purchased by the respondents are non-duty paid or have been charged to nil rate of duty. They merely rely on Notification No. 208/83-C.E. This notification obviously cannot help the department because the notification gives full exemption only if the conditions spelt therein are satisfied. As already mentioned, department has not produced evidence to that effect as well that the conditions of the Notification No. 208/83-C.E. (as amended) have been satisfied in respect of the M.S. Sheets purchased by the manufacturers from the open market proving thereby that such M.S. Sheets are either clearly non-duty-paid or charged to nil rate of duty." 4. The facts of the present case are identical to the facts of the case reported in the aforesaid decision. In the present case the notifications granted exemption of duty on the specified goods subject to fulfilment of certain conditions. The Department has not been able to produce any evidence to show that the conditions mentioned in the notifications were fulfilled and the exemptions were actually availed of under those notifications in respect of the goods in question. In the circumstances, the present case is squarely covered by the earlier decision of this Tribunal relied on by the learned consultant. I see no reason to differ with that decision. Consequently, following the aforesaid decision I uphold the impugned order of the Collector (Appeals) and dismiss these two appeals.